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In the

Supreme Court of the United States

OCTOBER TERM, 1941

No. 596

H. H. IRVINE,

Appellant,

vs.

G. HOWARD SPARTH, COMMISSIONER OF TAXATION OF MINNESOTA,

Appellee.

BRIEF OF APPELLANT OPPOSING THE MOTIONS OF APPELLEE TO DISMISS THE APPEAL IN THE ABOVE ACTION OR, IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT FROM WHICH SUCH APPEAL WAS TAKEN

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The appeal in the above entitled cause to this Court is from a judgment entered in the Supreme Court of the State of Minnesota in said action in favor of the appellee and against the appellant. That Court rendered an opinion in said case on June 20, 1941, which is reported in ... Minn. ..., 299 N. W. Rep. 204.

STATEMENT OF THE CASE

The issue presented by this appeal is whether, in view of Revised Statutes of the United States, Section 5219, as amended (12 U. S. C. A., Section 548), Minnesota may subject to its income tax* dividends received by appellant on

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*Section 2394, Mason's Minnesota Statutes, 1938 Supplement, and more particularly Sections 2394-3 (b), 2394-10, 2394-11, 2394-12 (f) and (g), 2394-21 (a), 2394-22, 2394-23 (b), and 2394-48.

shares of First Bank Stock Corporation owned by appellant which were paid out of dividends on shares of national banks owned by First Bank Stock Corporation, which national bank shares have been taxed ad valorem.

APPELLANT'S POSITION

Appellant contends that the taxation of the portion of dividends received by appellant on his shares in First Bank Stock Corporation paid from dividends received by First Bank Stock Corporation on shares of national banking associations owned by First Bank Stock Corporation violates R. S. 5219, since such taxation has the effect under R. S. 5219 and decisions of this Court of imposing a Congressionally forbidden tax, in that the subjection of such dividends to an income tax is in effect subjecting national bank dividends to an income tax in violation of the immunity granted to such dividends where the shares of the national banks paying the dividends have been taxed ad valorem, and in that Minnesota thereby gets two taxes from the shareholder, where but one is permitted.

STATEMENT OF FACTS

First Bank Stock Corporation is a Delaware corporation licensed and doing business in Minnesota. It owned a majority of the shares of national and state banks situated in Minnesota, North Dakota, South Dakota, and Montana. Such shares were subjected to tax under the first method permitted by R. S. 5219 by the States in which the national banks issuing such shares were situated. Most of First Bank Stock Corporation's income constituted dividends on shares of national banking associations owned by it. Appellant, a Minnesota resident, was, during 1937, the owner of shares of First Bank Stock Corporation. He received two dividends

on his shares in First Bank Stock Corporation during 1937, and such dividends were 92.35% and 87.34%, respectively, paid out of dividends received by First Bank Stock Corporation from national banks. All of appellant's 1937 dividends received from First Bank Stock Corporation were subjected to tax under Minnesota income tax law. Appellant, claiming that so much of such dividends as were paid out of national bank dividends were not subject to Minnesota income tax because of R. S. 5219, duly claimed refund of so much of his Minnesota income tax liability paid by him for the year 1937 as was based on that part of his First Bank Stock Corporation dividends paid out of national bank dividends, and duly brought suit in the District Court of Ramsey County, Minnesota, for the recovery of such tax. Judgment in that action was against appellant and in favor of appellee, and on appeal to the Supreme Court of Minnesota the judgment was affirmed.

ARGUMENT

The Supreme Court of the State of Minnesota approved the judgment of the trial Court and held that the Minnesota income tax law, construed to impose a tax on the full amount of the dividends so received by appellant, did not violate R. S. 5219, saying, ... Minn. ..., 299 N. W. Rep. 204, 205:

> "Plaintiff's case is based on R. S. Section 5219, as amended, 12 U. S. C. A. Section 548, which in part reads: 'The several States may (1) tax said shares (of national banking associations), or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:'
>
> "(1) As federal instrumentalities, national banks are subject to no inherent power in the states to tax them. The banks, their property, and shares of their capital stock are subject to state taxation only as con-

gress permits. *Des Moines National Bank vs. Fairweather,* 263 U. S. 103, 44 S. Ct. 23, 68 L. Ed. 191, and cases cited. A tax beyond that permission is void. *Owensboro National Bank vs. Owensboro,* 173 U. S. 664, 19 S. Ct. 537, 43 L. Ed. 850.

"The congressional permission is in Section 5219. As the first of the 'following conditions' referred to in the above quotation therefrom, it declares that 'The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.' Minnesota did not, in 1937, tax national banks 'according to or measured by their net income.' Instead, it taxed their shares. 1 *Mason Minn. St. 1927,* Sections 2026-1 to 2026-4. Under 3 *Mason Minn. St. 1940 Supp.,* Section 2394-5 (a), national and state banks are exempt from operation of the state income tax.

"Thus, the question is whether the tax in question is an 'other' tax on the 'shares of national banking associations.' Plaintiff's contention is that 'because Minnesota cannot impose a tax on dividends paid by national banks it cannot impose a tax on dividends paid by First Bank Stock Corporation out of national bank dividends.' That, in sum, is the case for plaintiff. We deny it for these reasons."

Since there is here called in question the validity of a state law which it is claimed is repugnant to the laws of the United States, viz., R. S. 5219, and since the state law was held valid after the conclusion by the Supreme Court of the State of Minnesota that the manner of state taxation of national banks and their shareholders must accord with R. S. 5219, it is submitted that it is clear that the Federal question as to the validity of the Minnesota income tax law as applied to the taxation of appellant's dividends received from First Bank Stock Corporation, as tested by R. S. 5219, was necessarily involved and decided and that this Court has jurisdiction. *Colorado Bank vs. Bedford,* 310 U. S. 41; *First Bank Stock Corporation vs. Minnesota,* 301 U. S. 234; *First Na-*

tional Bank vs. Anderson, 269 U. S. 341; and *Dickinson vs. Stiles,* 246 U. S. 631.

Appellant respectfully submits that the opinion of the Supreme Court of the State of Minnesota shows beyond a doubt that this appeal involves a substantial question of Federal law. The following is a brief summary of appellant's contentions, respectfully submitted in support of his claim that the question involved is substantial.

This Court has repeatedly decided and in many cases assumed that the right to tax the shareholders of national banks in respect of their shares, and it follows, appellant contends, in respect of dividends, arises solely from the Congressional permission contained in R. S. 5219. *Van Allen vs. The Assessors,* 3 Wall. 573; *Farmers and Mechanics National Bank vs. Dearing,* 91 U. S. 29; *People vs. Weaver,* 100 U. S. 539, 543; *Talbot vs. Silver Bow County,* 139 U. S. 438; *Owensboro National Bank vs. Owensboro,* 173 U. S. 664; *Home Savings Bank vs. City of Des Moines,* 205 U. S. 503; *Bank of California vs. Richardson,* 248 U. S. 476; *Des Moines National Bank vs. Fairweather,* 263 U. S. 103; *First National Bank of Guthrie Center vs. Anderson,* 269 U. S. 341; and *Colorado Bank vs. Bedford, supra.*

This Court has decided that Congress has the power to grant immunity from state taxation to national banks and the shareholders of national banks; that, when such immunity has been granted, it is immaterial whether or not the tax sought to be imposed is a burden on the national banking association involved; that, since Congress has the power to create national banks, it follows therefrom that it has the power to grant such immunities as are expressed in and to be implied from R. S. 5219; and that the statute granting immunity is binding on this Court. *Pitman vs. Home Owners Loan Corporation,* 308 U. S. 21; *Des Moines National Bank vs. Fairweather,* 263 U. S. 103, 106. See also *Smith*

vs. Kansas City Title Company, 255 U. S. 180, 211, 212; *Lawrence vs. Shaw,* 300 U. S. 245.

The Congress has legislated on the subject of the taxation of shareholders of national banking associations, R. S. 5219. It has, in so far as material to the question presented by this appeal, permitted Minnesota to tax the shares or the dividends of national banking associations. It has thereby consented to the imposition of one tax by the states on such shares or dividends, and has expressly prohibited the taxation of both. The subjection by a state of the value represented by the shares to another tax is expressly prohibited by R. S. 5219 as construed by this Court. This is so even though the subject of state taxation is shares of the corporate holder of shares of national banking associations. *Bank of California vs. Richardson,* 248 U. S. 476, 483; *Schuylkill Trust Company vs. Pennsylvania,* 296 U. S. 113; *Schuylkill Trust Company vs. Pennsylvania,* 302 U. S. 506. It can make no difference that the tax here claimed to be repugnant to R. S. 5219 is one imposed on dividends of a corporate holder of national banking association shares and paid out of dividends received on such shares because the reasoning and the holding of the cited cases establishes that R. S. 5219 means that one tax, and only one tax, may be imposed on the shareholders of national banking associations, and that, for the purpose of giving effect to the Congressionally granted immunity, the shareholders of a corporate holder of shares of national banking associations are regarded as national banking association shareholders. Since *Bank of California vs. Richardson, supra,* was decided in 1919 and since the Congress amended R. S. 5219 thereafter and in 1923 and 1926 (Mar. 4, 1923, c. 267, 42 Stat. 1499; Mar. 25, 1926, c. 88, 44 Stat. 223), it can be fairly said that the Congress has approved this Court's construction of Section 5219. Since it is settled law that shares of a corporate holder of shares of national bank-

ing associations cannot be subjected to tax to the extent that the value of such shares includes the value of the shares of national banking associations, it is clear that the dividends of the corporate holder of national banking associations cannot be taxed to the extent that they included dividends of national banks, if such dividends had been taxed to such corporate holder. Since the two methods of taxation have been expressly made mutually exclusive, it is respectfully submitted that, where as here a state has elected the first method, viz., the method which permits the taxation of shares and has imposed a tax thereunder, it cannot thereafter tax, either directly or indirectly, the dividends of the national banking associations, the shares of which have been taxed. The effect of the decision of the Supreme Court of Minnesota is, on the one hand, to require Minnesota to look to R. S. 5219 for authority to tax the shareholders of national banks and permit Minnesota to ignore R. S. 5219 for the purpose of imposing an additional tax prohibited by that section.

Tradesmen's National Bank vs. Oklahoma Tax Commission, 309 U. S. 560, is not to the contrary. It involved the validity of a state tax which was imposed under the fourth method permitted by R. S. 5219. This Court's statement, so heavily relied on by appellee, that "The various restrictions it (Revised Statutes of the United States, Section 5219) places on the *permitted methods* of taxation are designed to prohibit only those systems of state taxation which in practical operation discriminate against national banking associations or their shareholders as a class" clearly deals only with restrictions placed on the permitted methods, since the entire controversy was concerned with claimed violation by the state law of the restrictions upon the fourth permitted method. This Court had no occasion to and did not consider the restriction contained in R. S. 5219 upon the simultaneous imposition by a state of taxes under two of the permitted

methods, as Minnesota claims the right to do in this case.

Des Moines National Bank vs. Fairweather, supra, cited by the Supreme Court of Minnesota as supporting its conclusion that Minnesota has the right to tax appellant's dividend income, does not, appellant respectfully submits, deal at all with the question presented in his case. There the right of Iowa to tax a national bank's shares and to include in the value of such shares the value of the bank's investments in tax exempt United States securities and stock in a Federal Reserve Bank was upheld. Appellant contends that the case was not one which involved an immunity Congressionally established, for it has not been found that the Congress prohibited inclusion in the value of national banks shares of such investments. It is respectfully submitted that no prohibition similar to that contained in R. S. 5219 was involved in that case.

For the foregoing reasons appellant respectfully submits that the question presented by this appeal is substantial, and that this Court should deny appellee's motion to dismiss the appeal or, in the alternative, to affirm the decision of the Supreme Court of the State of Minnesota.

Dated September 10, 1941.

Respectfully submitted,

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